

Message Text

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UNCLAS SECTION 1 OF 2 LA PAZ 2082

EO 11652: NA
TAGS: BL, CASC
SUBJECT: US-BOLIVIAN TREATY ON EXCHANGE OF PENAL SENTENCES

REF: (A) LA PAZ 1153, (B) MEXICO 268

1. THE EMBASSY HAS BEEN REVIEWING THE BOOKLET PREPARED BY THE JUSTICE DEPT ENTITLED INFORMATION BOOKLET FOR UNITED STATES CITIZENS INCARCERATED IN MEXICAN PRISONS REGARDING THE TREATY BETWEEN THE UNITED MEXICAN STATES AND THE UNITED STATES OF AMERICA ON THE EXECUTION OF PENAL SENTENCES.

WE ASSUME THAT JUSTICE IS PREPARING A SIMILAR BOOKLET FOR AMERICANS INCARCERATED IN BOLIVIA WHO STAND TO BENEFIT FROM THE US-BOLIVIAN TREATY RECENTLY CONCLUDED. COMMENTS IN THIS CABLE ARE DESIGNED TO FACILITATE ADAPTING THE BOOKLET TO BOLIVIAN CONDITIONS, AS WELL AS TO CLARIFY IN ADVANCE SOME OF THE MORE PRESSING QUESTIONS THAT THE PRISONERS HAVE HERE.

2. MANY OF THE PRISONERS HERE ARE CONCERNED OVER WHETHER OR NOT THEY WILL HAVE A CRIMINAL AND/OR PENAL RECORD IN THE UNITED STATES IF THEY GO BACK TO SERVE THEIR SENTENCES THERE. ALTHOUGH QUESTION 22 OF PART I DEALS WITH THE IMPACT OF A FOREIGN CONVICTION UPON CIVIL, POLITICAL, AND CIVIC RIGHTS, AND SAYS THAT THIS IMPACT IS LIMITED UNDER FEDERAL LAW, IT DOES NOT SPELL OUT WHAT THIS IMPACT IS OR WHAT IT MIGHT

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BE IN VARIOUS STATES. NOR DOES IT DIRECTLY ANSWER THE QUESTION OF WHETHER THE TRANSFERRED PRISONER WILL HAVE A POLICE OR PENAL RECORD ON THE BASIS OF HAVING SERVED TIME OR HAVING BEEN ON PAROLE IN THE UNITED STATES OR, IF SO, WHETHER THIS RECORD CAN BE DIVULGED, FOR EXAMPLE TO POTENTIAL EMPLOYERS, BY ANYONE OTHER THAN THE PERSON CONCERNED.

3. AS DEPARTMENT IS AWARE, GOB IS CONSIDERING VARIOUS CHANGES IN THE PRESENT NARCOTICS LAW, ONE OF WHICH WOULD REDUCE MAXIMUM PENALTIES. OUR UNDERSTANDING IS THAT INDIVIDUALS IN BOLIVIA MUST PETITION FOR A REVIEW OF THEIR SENTENCES ONCE THE NEW LAWS COME INTO EFFECT. IT IS NOT EXPECTED THAT THE LOWERING OF MAXIMUM SENTENCES WOULD AUTOMATICALLY BE RETROACTIVELY APPLIED IN BOLIVIA. THEREFORE, WE NEED TO REVIEW OUR AUTHORITY UNDER U.S. LAW TO APPLY THE AUTOMATIC REDUCTION OF SENTENCES PROPORTIONATELY IN THE UNITED STATES OF THOSE ALREADY TRANSFERRED UNDER THE TREATY, AS OUTLINED IN THE RESPONSE TO QUESTION 18 OF PART I. IF WE NEED BOLIVIAN ACTION TO PROVIDE US THIS AUTHORITY, WE SHOULD BE INSTRUCTED TO GET IT. ACCORDING TO THE EMBASSY LEGAL ADVISOR, THE PRISONER, ONCE TRANSFERRED, WOULD BE ABLE TO PETITION FOR REVIEW OF HIS SENTENCE IN BOLIVIA UNDER THE NEW LAW, SOMEWHAT AS OUTLINED IN THE RESPONSE TO QUESTION 20. BUT, WE WOULD PREFER TO PROVIDE A CLEAR BASIS FOR OUR APPLYING AN AUTOMATIC REDUCTION.

4. ANOTHER QUESTION FREQUENTLY RAISED BY THE PRISONERS HERE CONCERNS THEIR STATUS IF THEY ARE ON PAROLE (CONDITIONAL LIBERTY) IN LA PAZ. THE CONDITIONS OF PAROLE IN BOLIVIA REQUIRE THAT A PAROLEE REMAIN IN THE COUNTRY AND REPORT PERIODICALLY TO THE EQUIVALENT OF A PAROLE OFFICER. IN PRACTICE, THERE IS NO PAROLE REPORTING SYSTEM IN EFFECT AND UNCLASSIFIED

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THE PAROLEE IS IN FACT AT LIBERTY; HOWEVER, IN THE CASE OF FOREIGNERS, THEY ARE NOT NORMALLY ALLOWED TO LEAVE THE COUNTRY. ALTHOUGH THE EMBASSY HAS IN FACT BEEN ABLE TO ARRANGE FOR THE DEPARTURE FROM THE COUNTRY OF A NUMBER OF PAROLEES PRIOR TO THE SIGNING OF THE TREATY, THIS PROCEDURE MAY NO LONGER BE AVAILABLE ONCE THE TREATY IS IN EFFECT. WE WILL ATTEMPT TO ASCERTAIN GOB INTENTIONS IN THIS REGARD. ASSUMING THAT GOB INSISTS ON PAROLED PRISONERS RETURNING VIA THE TREATY, PLEASE ADVISE WHETHER SUCH PRISONERS MUST RETURN TO THE US IN CUSTODY; WHETHER THEIR PAROLE STATUS WILL BE ASSURED IN THE US OR MUST FIRST BE REVIEWED OR APPROVED BY THE US PAROLE COMMISSION OR OTHER BODY; AND WHAT US PENAL RECORDS WILL INDICATE ABOUT SUCH A PERSON. (TWO-THIRDS OF THE SENTENCE MUST BE SERVED BEFORE PAROLE IS GRANTED HERE.) THE EMBASSY WOULD HOPE THAT A PERSON ON PAROLE WHO IS TRANSFERRED UNDER THE TREATY WILL NOT BE WORSE OFF THAN SOME OF THE PREVIOUS PAROLEES WHO, WITH EMBASSY ASSISTANCE, WERE ABLE TO RETURN HOME AS FREE PERSONS BEFORE THE SIGNING OF THE TREATY.

5. QUESTIONS 50 THROUGH 64 OF PART I DEAL WITH PRE-TRANSFER PROCESSING OF PRISONERS, SPECIFICALLY PFOVIDING THEM WITH

INFORMATION ON THE TRANSFER PROCESS AND LEGAL ADVICE ABOUT THEIR STATUS, AND OUTLINING THE VERIFICATION PROCEDURES TO BE FOLLOWED.

THE REPLIES SPEAK OF AN INTERVIEW TEAM OF DEPARTMENT OF JUSTICE AND BUREAU OF PRISONS OFFICIALS, A UNITED STATES MAGISTRATE TO PRESIDE OVER THE VERIFICATION PROCEEDINGS, AND POSSIBLY A US FEDERAL DEFENDER TO PROVIDE LEGAL COUNSEL FOR PRISONERS WHO CANNOT AFFORD THEIR COUNSEL. ASSUMING THAT BASICALLY THE SAME PROCEDURES WILL BE FOLLOWED IN BOLIVIA, WE REQUEST THAT THE INTERVIEW TEAM VISIT BOLIVIA AS SOON AS POSSIBLE, PREFERABLY BEFORE THE END OF MARCH, SINCE THE ENABLING LEGISLATION IS ALREADY IN EFFECT, AND ONLY SENATE ACTION ON THE TREATY AND EXCHANGE OF RATIFICATIONS REMAIN BEFORE THE US-BOLIVIAN TREATY

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COMES INTO EFFECT (THE THIRTY DAY WAITING PERIOD OF THE MEXICAN TREATY HAVING BEEN ELIMINATED). SINCE THE INITIAL GROUP OF PRISONERS ELIGIBLE FOR TRANSFER WILL BE RELATIVELY SMALL (WE ESTIMATE UP TO FIFTEEN; SEE LA PAZ 1153), WE FEEL THAT TIME COULD BE SAVED IF THE INTERVIEW TEAM INCLUDED THE US DEFENDER

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SO THAT LEGAL COUNSEL COULD BE PROVIDED JOINTLY WITH THE INFORMATION OFFERED BY THE INTERVIEW TEAM; THE US DEFENDER COULD RETURN LATER WITH THE US MAGISTRATE AT THE TIME OF VERIFICATION PROCEEDINGS, IF NECESSARY. PLEASE ALSO ADVISE WHETHER IT WILL BE NECESSARY TO REQUEST THE GOB TO TRANSFER PRISONERS FROM COCHABAMBA AND SANTA CRUZ TO LA

PAZ FOR THE VERIFICATION PROCEDURES (DISTANCE BETWEEN THESE CITIES ARE NOT GREAT AND AIR CONNECTIONS ARE FAIRLY RELIABLE; CONCEIVABLY, TRANSFER OF THE PRISONERS TO LA PAZ COULD BE POSTPONED UNTIL JUST BEFORE EPARTURE FOR THE US). IT SHOLD ALSO BE REMEMBERED THAT, UNDER THE US-BOLIVIAN TREATY, THE EMBASSY MUST INITIATE THE REQUEST FOR TRANSFER BY WRITTEN PETITION TO THE MINISTRY OF FOREIGN AFFAIRS. IT IS NOT YET KNOWN WHAT KIND, IF ANY, OF FORMAL VERIFICATION OR CONSENT PROCEDURES THE GOB WILL WISH TO INSTITUTE. IF THE DEPARTMENT WISHES, THE EMBASSY CAN PROCEED IMMEDIATELY TO FINGERPRINT THE ELIGIBLE PRISONERS (WITH THEIR CONSENT) AND VERIFY THEIR CITIZENSHIP AND PREPARE NECESSARY DOCUMENTATION AS US CITIZENS AS SUGGESTED IN MEXICO 268.

6. AN IMPORTANT UNANSWERED QUESTION FOR PRISONERS NOT PRESENTLY ELIGIBLE FOR TRANSFER IS NUMBER 75 OF PART I CONCERNING SUBSEQUENT TRANSFERS. CAN THE DEPARTMENT NOW FURNISH ANY GUIDELINES IN THE LIGHT OF THE MEXICAN EXPERIENCE? WE FEEL THAT THE INTERVIEW TEAM AND THE US DEFENDER SHOULD BE WILLING TO ASSIST NOT ONLY PRISONERS ACTUALLY ELIGIBLE TO TRANSFER, BUT ALSO THOSE UNCLASSIFIED

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WHO ARE WITHIN A REASONABLE PERIOD (SAY THREE MONTHS) OF FINAL SENTENCING, AS THIS COULD SAVE TIME LATER ON.

7. SPECIFIC COMMENTS ON PART I:

QUESTIONS 2, 8, 9, 37 AND 38 ARE IRRELEVANT TO THE US-BOLIVIAN TREATY, AS ARE ANSWERS 1B AND 1C. MOST OF THE OTHER QUESTIONS AND ANSWERS OF PART I WITH THE EXCEPTIONS NOTED BELOW, APPEAR TO REQUIRE ONLY TEXTUAL CHANGES SUCH AS SUBSTITUTION OF "BOLIVIA" FOR "MEXICO", AND ELIMINATION OF REFERENCES TO WORK CREDITS (FOR EXAMPLE 1C AND 39), WHICH DO NOT EXIST UNDER THE BOLIVIAN SYSTEM. THE SPECIAL AMPARO PROCEEDING USED IN MEXICO IS UNCOMMON IN BOLIVIAN CRIMINAL LAW AND REFERENCE TO IT SHOULD BE OMITTED. SPECIFIC SUBSTANTIVE CHANGES TO QUESTIONS IN PART I NOT ALREADY REFERRED TO ABOVE ARE AS FOLLOWS:

1D: POLITICAL OFFENDERS ARE NOT EXCLUDED FROM TRANSFER UNDER THE BOLIVIAN TREATY.

4: EITHER THE ACCUSED OR THE PROSECUTOR MAY APPEAL TO THE SUPREME COURT. APPEALS BY THE DEFENSE TO THE SUPREME COURT, ONCE INSTITUTED, CAN BE DROPPED BY PETITION TO THE SUPREME COURT TO TERMINATE THE PROCEEDINGS. SUPERIOR COURT REVIEW, HOWEVER, IS AUTOMATIC AND CANNOT BE WAIVED.

7: ONCE THE SUPERIOR COURT DECISION HAS BEEN HANDED

DOWN, A PRISONER WHO DOES NOT WISH TO APPEAL TO THE CUPREME COURT, BUT WHOSE CO-DEFENDENTS ARE APPEALING, SHOLD ASK HIS ATTORNEY TO PETITION TO SEPARATE HIS CASE FROM THE OTHERS' CASES, SO THAT HE WILL NOT HAVE TO AWAIT THE OUTCOME OF THE

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SUPREME COURT APPEAL.

10: THE BOLIVIAN AUTHORITIES HAVE INDICATED THAT THEY INTERPRET ARTICLE III-6 TO MEAN THAT ALL FINES MUST BE PAID BEFORE TRANSFER UNDER THE TREATY.

11: THE BOLIVIAN AUTHORITIES HAVE INDICATED THAT REPARATIONS (CIVIL DAMAGES) MUST ALSO BE PAID.

18: AND 20: SEE ABOVE, PARA 3. NECESSARY INDULTO IS NOT AVAILABLE IN BOLIVIA. AMPARO CONSTITUCIONAL AND HABEAS CORPUS ARE NORMALLY INTRODUCED BEFORE SENTENCING. THE MAIN QUESTION TO BE RESOLVED IS THAT MENTIONED IN PARA 3.

22: THIS GUARANTEE IS NOT SPECIFICALLY IN THE BOLIVIAN TREATY ITSELF.

23. THE EMBASSY LEGAL ADVISOR SEES NO PROBLEM IN GENERAL IN A PRISONER RETURNING TO BOLIVIA, ONCE HE HAS SERVED HIS SENTENCE, AFTER BEING TRANSFERRED UNDER THE TREATY. HOWEVER, THE ADVICE OF COMPETENT BOLIVIAN LEGAL COUNSEL SHOULD BE SOUGHT IN INDIVIDUAL CASES.

48 AND 49: UNDER THE BOLIVIAN TREATY, IT IS THE EMBASSY WHICH INITIATES THE TRANSFER PROCESS, NOT THE GOB. THE EMBASSY WILL NOT, OF COURSE, PETITION THE GOB UNLESS THE PRISONERS EXPRESSES AN INITIAL (NON-BINDING) INTEREST IN BEING TRANSFERRED.

50 TO 64: SEE ABOVE, PARA 5.

75: SEE ABOVE, PARA 6.

PARTS II AND III. WE ASSUME THESE WILL REMAIN

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SUBSTANTIALLY THE SAME.

8. EVEN THOUGH THE NUMBER OF PERSONS AFFECTED BY THE US-BOLIVIAN TREATY IS FAIRLY SMALL, WE HOPE THAT THE INFORMATION BOOKLET CAN BE COMPILED AND DISTRIBUTED AS QUICKLY AS POSSIBLE AND THAT THE INTERVIEW TEAM CAN BEGIN THEIR WORK IN MARCH. GUIDANCE ON SPECIFIC QUESTIONS IN PRAS 2-6 IS REQUESTED TELEGRAPHICALLY.

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